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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1144 OF 2021
IN
FIRST APPEAL (ST) NO. 2400 OF 2021**

Executive Engineer, Nandur Madhyameshwar ...Applicant
Project, Division Nashik

Versus

Rambhau Shankar Shirsat ...Respondent

Ms.Chaitrali Deshmukh, for the Applicant.
Mr.Sachin Gite, for the Respondent.
Smt.Tanya Goswami, for the Respondent No.2.

**CORAM Madhav J. Jamdar, J.
DATED: 21st April, 2022**

PC:-

1. Heard Ms.Chaitrali Deshmukh, learned Counsel appearing for the Applicant, Mr.Sachin Gite, learned Counsel appearing for Respondent and Ms.Tanya Goswami, learned AGP appearing for the Respondent No.2.

2. By this Interim Application, the Applicant is seeking condonation of delay of 3 years and 66 days in filing the First Appeal challenging the judgment and award dated 7/08/2017 passed by the learned Civil Judge, Senior Division, Nashik in Land Reference No.48 of 2010.

3. Ms.Deshmukh, learned Counsel appearing for the Applicant submitted that although there is considerable delay the same has been adequately explained in paragraph 5 of the Interim Application. She submitted that delay was caused as the Applicants were receiving conflicting opinions about the efficacy of filing the Appeal. She submitted that as filing of Appeal requires considerable expenses including payment of Court fees, the decision was taken after due deliberation and, therefore, delay has occurred.

4. On the other hand Mr.Sachin Gite, learned Counsel appearing for Respondent submitted that this Court by order dated 24th September 2019 passed in Interim Applicant No.1 of 2019 in First Appeal (Stamp) No.25256 of 2019 rejected the delay condonation wherein there was delay of 2 years 108 days. He submitted that the facts of the said case are similar to the present case.

5. Smt.Tanya Goswami, learned AGP submitted that adequate reasons are given by the Acquiring Body i.e. GMIDC and, therefore, Interim Application be allowed.

6. Ms.Chaitrali Deshmukh, learned Counsel has emphasized on paragraph 5 of the Interim Application. The said paragraph is reproduced hereinbelow for ready reference:

“5. The Applicant state and submits that, there is delay in preferring the aforesaid First Appeal in this Hon’ble Court. The Applicant state that, Applicant is Government body and it required various sanction/approval from the higher authorities for permission to file First Appeal in this Hon’ble High Court. The Applicant say that following are some of the relevant days to condonation above mentioned Civil Application for condonation of delay:

Date	Events
07.08.2017	Judgment and Award passed by the Ld.Civil Judge, Senior Division, Nashik.
10.08.2017	The Government Pleader office had applied for certified copy of Judgment and Award.
22.03.2018	The Government Pleader office received certified copy of Judgment and Award.
19.04.2018	The Government Pleader had given his opinion that the judgment is passed basis of Award pass previously and after considered the evidence and given proper rate as per own Land Acquisition Act, hence Judgment and Award is proper. He further opined that, there is no need to challenge the said Judgment and Award before the Hon’ble High Court.
24.06.2018	The Advocate appearing for corporation before the District Court had opined that the judgment is passed on the basis of Judgment and Award passed previously. Hence, the Judgment and Award is proper and no need to challenge the same.

25.06.2019	The proposal for the legal advice with all documents submitted to the legal advisor GMIDC Aurangabad.
19.07.2019	The legal advisor of GMIDC had advice to filed First Appeal against the Judgment and Award.
26.07.2019	The present Advocaate was appointed for filing present Appeal
9.08.2019	The papers handed over to the Advocate for filing First Appeal.
16.09.2019	The concern Advocate had asked for detail reasons for delay in filing present Appeal and asked for Stamp Duty for filing First Appeals.
20.11.2019	The sub-division had sent detail reasons explaining the delay caused in filing First Appeals.
10.01.2020	The sub-division received Stamp Duty for filing First Appeal.

7. The facts as disclosed in paragraph 5 clearly shows that certified copy of the impugned Judgment and Award was applied within 3 days of passing of the same. Immediately after receipt of the certified copy of the impugned Judgment and Award, opinion of the Government Pleader was taken. Thereafter the opinion of the Advocate who had appeared for the Applicant before the District Court was taken. Both gave unanimous opinions that Appeal need not be filed. Thereafter the proposal for legal advise was submitted to the Legal Advisor, GMIDC, Aurangabad. Thereafter on 19th July 2019 he advised GMIDC to file the First Appeal. The above dates

show that thereafter immediately steps were taken and the First Appeal was filed.

8. Mr.Sachin Gite, learned Counsel appearing for Respondent has strongly relied on the order dated 24th September 2019 passed by this Court in Interim Application No.1 of 2019 in First Appeal (Stamp) No.25256 of 2019 and more particularly on the paragraph 6 of the said order. The said paragraph 6 is reproduced hereinbelow:

“6. It is to be noted that, in the present proceeding, **though the impugned Judgment and award passed by the reference court on 18/02/2017, the Applicant filed application for certified copy on 10th July 2019 and the same was received on 16th July 2019.** Thereafter, they filed the present First Appeal before this Court in September 2019. **In the entire Interim Application there is no explanation why the Applicant took more than two and half year in applying for certified copies of Judgment and award passed by the Tribunal.** In para 5 of the Interim Application, the Applicant stated that earlier the office of the District Government Pleader had applied for certified copies in the year 2017 itself. But thereafter, for filing First Appeal, they again filed fresh application for certified copies. That cannot be a sufficient ground for condonation of more than 2 years delay. Apart from that before filing the First

Appeal they have to take approval from several departments, even that cannot be treated as a sufficient ground for condonation of inordinate delay of more than 2 year.”

(Emphasis added)

9. It appears that in the said matter where the order dated 24th September 2019 was passed and on which Mr.Gite, the learned Counsel of the Respondents has very strongly relied, the impugned judgment and award of the Reference Court is dated 18th February 2017 and the Application for certified copy was filed on 10th July 2019 i.e. after about two and half years. In the present case the impugned judgment and award is dated 7/08/2017 and immediately within three days the application for certified copy of the said impugned judgment and award was submitted. The factual position in the present case and the reasons given in the order dated 24th September 2019 clearly shows that the factual position in this case is totally different. Thus there is no substance in the contention of Mr.Gite that the said order is squarely applicable to the facts of the present case.

10. I am satisfied that the reasons given in paragraph 5 and 6 are sufficient reasons. Mr.Sachin Gite, learned Counsel appearing for Respondent has not pointed out anything to show that the reasons given in paragraphs 5 and 6 are incorrect. Thus case is made out for condonation of delay.

11. In view of above, the Interim Application is allowed in terms of prayer clause (b).

(Madhav J. Jamdar, J.)